

Decision 02-12-070 December 19, 2002

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

The application of SAN DIEGO GAS & ELECTRIC (U 902 E) for approval of servicing agreement between the State of California Department of Water Resources (“DWR”) and SDG&E Company Pursuant to Chapter 4 of the Statutes of 2001 (Assembly Bill 1 of the First 2001-2002 Extraordinary Session).

Application 01-06-039  
(Filed June 22, 2001)

**OPINION APPROVING THE 2003 SERVICING ORDER CONCERNING  
SAN DIEGO GAS & ELECTRIC COMPANY AND THE CALIFORNIA  
DEPARTMENT OF WATER RESOURCES**

**Summary**

On October 8, 2002, the California Department of Water Resources (DWR) submitted to this Commission a memorandum and proposed modifications to the “First Amended and Restated Servicing Agreement” (Amended Servicing Agreement) between DWR and San Diego Gas & Electric Company (SDG&E).<sup>1</sup> DWR’s submission was made in response to D.02-09-053 (the “Contract Allocation Decision”), which directed DWR and SDG&E to negotiate appropriate modifications to the Amended Servicing Agreement as a result of the allocation

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<sup>1</sup> The Amended Servicing Agreement was previously approved by the Commission in Decision (D.) 02-04-048.

of energy from, and operational responsibility for, DWR's electricity contracts to SDG&E and the other two large electric utilities.

Today's decision approves a modified version of DWR's proposed modifications, which we have labeled as the "2003 Servicing Order Concerning State of California Department of Water Resources And San Diego Gas & Electric Company" (Servicing Order). Because the changes that DWR proposed, and that we here approve with modifications, were not agreed to by SDG&E, we are constrained to issue a Servicing Order rather than approve a Servicing Agreement. Appendix A of this decision contains a marked version of the revisions to the Servicing Order that we approve today. Appendix B of this decision is a "clean" copy of the approved Servicing Order. SDG&E is ordered to comply with the terms and conditions of the Servicing Order. The Servicing Order sets forth the terms and conditions under which SDG&E will provide the transmission and distribution of DWR-purchased electricity, as well as billing, collection, and related services on behalf of DWR. The Servicing Order also addresses DWR's compensation to SDG&E for providing those services.

Today's Servicing Order is needed because DWR and SDG&E have been unable to negotiate a mutually agreeable servicing arrangement. Due to the upcoming date when SDG&E is to assume operational control of the DWR contracts allocated to it, a Servicing Order needs to be put into place prior to year's end.

## **Background**

In January 2001, in response to the energy crisis facing California, the Legislature gave DWR the authority to purchase electricity and sell it to the retail customers of California's electric utilities. This authority was provided for in

Assembly Bill 1 of the First Extraordinary Session of 2001-2002 (Stats. 2001, Ch. 4) (AB X1).

In March 2001, the Commission ordered SDG&E to segregate, and hold in trust for the benefit of DWR, certain amounts its customers had paid for DWR's electricity. (D.01-03-081.) This arrangement was formalized in the "Servicing Agreement Between State of California Department of Water Resources and San Diego Gas & Electric Company," which was approved by the Commission with certain modifications in D.01-09-013.

As a result of D.01-09-013, D.02-02-051, and D.02-02-052,<sup>2</sup> SDG&E and DWR discussed and negotiated amendments and restatements to the Servicing Agreement. These changes were reflected in the Amended Servicing Agreement, which the two parties signed on March 29, 2002. Subsequently, SDG&E sought Commission approval of the Amended Servicing Agreement by filing a petition for modification of D.01-09-013. The Commission granted SDG&E's petition and approved the Amended Servicing Agreement in D.02-04-048.

In D.02-07-038, the Commission approved SDG&E's second petition to modify D.01-09-013. This petition sought Commission approval of "Amendment No. 1" to the Amended Servicing Agreement.<sup>3</sup> Thus, prior to today's decision, the existing servicing arrangements between SDG&E and DWR are composed of the Amended Servicing Agreement and Amendment No. 1.

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<sup>2</sup> D.02-02-051 adopted the Rate Agreement between DWR and the Commission, and D.02-02-052 allocated DWR's 2001-2002 revenue requirement among the customers in the utilities' service territories in California.

<sup>3</sup> Amendment No. 1 implemented the 2002 20/20 Program for energy conservation, and provides for the bond charge to appear as a separate line item on a consolidated utility bill.

Under AB X1, DWR's authority to contract for electricity purchases expires on January 1, 2003. (Water Code § 80260.) Rulemaking (R.) 01-10-024 was initiated by the Commission to allow the electric utilities to resume the responsibility of procuring electricity for their customers. In D.02-09-053, the Commission ordered SDG&E, and the other two large electric utilities, to assume all of the operational, dispatch, and administrative functions for the electricity contracts that DWR had entered into, effective January 1, 2003. D.02-09-053 also allocated the DWR contracts to the resource portfolios of the three utilities, who are to schedule and dispatch the contracts in a least-cost manner.

As a result of the assumption of the operational duties for the DWR contracts, the Contract Allocation Decision recognized that the "servicing arrangements" that DWR had entered into with SDG&E, would need to be altered. (D.02-09-053, pp. 15, 59.) In Ordering Paragraph 3 of D.02-09-053, DWR and SDG&E were directed to negotiate appropriate modifications to their servicing arrangements, and DWR was directed to "submit its proposed modifications" by October 1, 2002. DWR and the three electric utilities were also directed to jointly file proposed operational agreements and proposed standards for reasonableness review by October 1, 2002.

The three utilities requested an extension of the submission date for the proposed modifications to the servicing arrangements and proposed operational agreements. The Commission's Executive Director, in a letter dated September 27, 2002, granted an extension of one week, to October 8, 2002.

In response to the submissions ordered in D.02-09-053, on October 8, 2002, DWR electronically transmitted to the Commission, and to the service list, a

memorandum from Peter Garris of DWR, along with the proposed modifications to the existing servicing arrangements for SDG&E, and the other two utilities.<sup>4</sup> The document containing DWR's proposed modifications to SDG&E's servicing arrangements is labeled "2003 Servicing Agreement Between State of California Department of Water Resources And San Diego Gas & Electric Company." DWR also transmitted two other documents, one which contains Attachments A through H of the Servicing Order, and the other which contains Attachment J of the Servicing Order.

Due to the earlier extension by the Executive Director, the assigned administrative law judge (ALJ) issued a ruling on October 10, 2002, allowing interested parties additional time to submit comments on the proposed modifications to SDG&E's servicing arrangements, and reply comments. SDG&E filed comments and reply comments on October 18, 2002 and October 23, 2002, respectively. On October 23, 2002, DWR transmitted a memorandum entitled "Comments Concerning Submissions Requested by the California Public Utilities Commission Decision 02-09-053."

### **Summary of Proposed Modifications to the Amended Servicing Agreement**

The proposed modifications to the Amended Servicing Agreement and related attachments have been compared to the Amended Servicing Agreement that was approved in D.02-04-048, and to Amendment No. 1 approved in D.02-07-038. In addition, the proposed modifications have been reviewed in light of the Contract Allocation Decision. Appendix A of this decision reflects

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<sup>4</sup> DWR also submitted the proposed operating agreement and related attachments.

the proposed modifications to the Amended Servicing Agreement through the use of underlining and strikeout markings.

The proposed modifications fall into the following categories:

- Definitions and requirements relating to the DWR contracts allocated to SDG&E in the Contract Allocation Decision.
- Definitions and requirements relating to the surplus energy sales and remittances that SDG&E will be responsible for.
- Definitions and requirements relating to the Operating Order.
- Incorporation of Amendment No. 1 into the modified version of the Amended Servicing Agreement.
- Certain attachments to be provided by SDG&E in Service Attachment 2.
- Incorporation of Attachment F, approved in D.02-07-038, into the modified version of the Amended Servicing Agreement.

In addition to the proposed modifications, additional changes have been made to the Amended Servicing Agreement and the related attachments. These additional changes are described in the discussion section below, and also reflect that SDG&E is being ordered to provide the services in accordance with the attached Servicing Order and that an Operating Order is expected to be approved, rather than an Operating Agreement.

## **Position of the Parties**

### **A. DWR**

According to DWR's October 8, 2002 memorandum, DWR distributed the proposed modifications to SDG&E's servicing arrangements on October 3

and 4, 2002. As of October 8, 2002, DWR was unable to ascertain whether the proposed modifications were acceptable to SDG&E.

DWR has proposed modifying the Amended Servicing Agreement by making certain changes to the accounting and reporting procedures. According to DWR, these changes are found in Attachments C and J of the Servicing Order, and parallel accounting and reporting provisions are contained in Exhibits C and F of the Operating Order. DWR states that these accounting and reporting procedures are consistent with the policy set forth in the Contract Allocation Decision.

In its October 23, 2002 memorandum, DWR noted that, consistent with AB X1 and the Contract Allocation Decision, that it would still be subject to continuing obligations with respect to the DWR contracts. In particular, these obligations include:

- Servicing the bonds as issuer;
- Managing legal and financial obligations under its long-term contracts;
- Ensuring the integrity of its revenues; and
- Fulfilling its substantial reporting obligations associated with the above.

DWR states that it is working to ensure that there is an efficient and timely transition to the utilities of the operational functions of the DWR contracts, while ensuring that DWR is able to fulfill its continuing obligations. To accomplish this goal:

“DWR believes that certain principles and arrangements must be established regarding utilities’ performance of

certain functions under the allocated DWR long-term contracts on behalf of DWR. The operating agreement is a compilation of such principles and arrangements that DWR believes are necessary to achieve these goals.

...

“In preparing the operating agreement, DWR’s objective has been to minimize DWR’s involvement in the utilities’ operation of the integrated portfolio, consisting of utility and allocated DWR contract resources, and to allow the utilities to make substantially all the operating decisions. The operating agreement is intended to provide appropriate mechanisms that allow the utilities to optimize the use of the integrated portfolio of resources on a service territory basis.... After the operational transition, DWR will continue to be legally and financially responsible for the direct costs under the allocated DWR long-term contracts, including gas-related costs. As a result, DWR needs to receive timely reporting of data outlined in Exhibit F of the operating agreement.

“To implement checks and balances while operating the integrated portfolio, DWR has proposed certain accounting and revenue sharing principles in Exhibit C of the operating agreement. DWR believes that the proposed accounting and revenue sharing principles provide greater certainty of revenues and cash flows to the utilities and DWR and, accordingly, aid the utilities in their quest for creditworthy status. Finally, DWR believes that the pro rata revenue-sharing methodology articulated in the Contract Allocation Decision and further reflected in DWR’s accounting and revenue sharing principles results in an equitable sharing of risk and reward. The information and data being requested under Exhibit F of the operating agreement are to facilitate DWR’s verification of the utilities’ remittances to DWR and costs incurred under the allocated contracts rather than to conduct an operational review of the utilities decisions.



“At this time, DWR does not believe that there is a consensus on the accounting and revenue sharing principles proposed by DWR. ... The resolution of the issues related to the accounting and revenue sharing principles will require a significant shift from the existing remittance policy and DWR believes that such a policy implementation can only be achieved with the Commission’s support and active involvement.” (DWR October 23, 2002 Memorandum, pp. 1-2.)

**B. SDG&E**

SDG&E’s comments emphasize three points that the Commission should keep in mind while considering the proposed modifications to the Amended Servicing Agreement. First, that DWR and SDG&E are still continuing to negotiate, and that more time is needed to reach a consensus with DWR concerning the proposed modifications. Second, that the proposed modifications to the Amended Servicing Agreement are duplicative or in conflict with the proposed Operating Agreement. Whatever is adopted in the proposed Operating Agreement will affect certain provisions in the proposed modifications to the Amended Servicing Agreement. And third, that the proposed modifications to the Amended Servicing Agreement should provide that any revenues for surplus sales will be net of expenses.

SDG&E’s comments also lists a series of concerns with the proposed modifications to the Amended Servicing Agreement and to the attachments. These issues fall into the following categories:

- Text changes to reflect the pro rata sharing of revenues contained in D.02-09-053.
- Text changes to reflect whether an agency relationship is created from the surplus sales made from a pro rata

resource pool of DWR and investor owned utility energy, and indemnification and waiver of liability issues.

- Text changes regarding credit risk management and the associated incremental costs related to the sale of surplus energy.
- When SDG&E should forward DWR's share of the surplus energy sales revenues.
- Changes to Service Attachment 2, and Attachments B, F and G.

## **Discussion**

In deciding whether we should approve the proposed modifications to the Amended Servicing Agreement and related attachments, the Commission is mindful of the course of action we have taken in R.01-10-024 and in D.02-09-053. One of the goals of R.01-10-024 is to allow the utilities “to resume purchasing electric energy, capacity, ancillary services and related hedging instruments to fulfill their obligation to serve and meet the needs of their customers.” (R.01-10-024, p. 1.)

In order for SDG&E and the other utilities to undertake the operational responsibilities associated with the allocated DWR contracts beginning on January 1, 2003, certain operational arrangements and servicing arrangements need to be in place. With less than one month to go before the utilities are to take over the operational responsibilities for the DWR contracts, DWR and SDG&E have been unable to agree on a mutually acceptable servicing arrangement. To ensure a seamless transition of the DWR contracts allocated to SDG&E, while ensuring that DWR's legal and financial responsibilities for the DWR contracts

continue to be fulfilled, it is imperative that servicing arrangements be in place before the end of 2002.

D.02-09-053 also required DWR to submit proposed operational agreements. As noted in the positions of the parties, certain provisions of the proposed operational agreement that DWR submitted may affect certain provisions of the proposed modifications to the Amended Servicing Agreement and the related attachments. The proposed operating agreement is being considered by the Commission in R.01-10-024. Since DWR and the utilities have been unable to mutually agree on a proposed operational agreement, we believe that the Commission will concurrently adopt an Operating Order when a Servicing Order for SDG&E is adopted.

On December 9, 2002, SDG&E filed its comments on the draft decision regarding the Servicing Order, and DWR submitted a memorandum on the three draft decisions regarding the Servicing Order. DWR's memorandum included a copy of "Amendment No. 2 To The First Amended and Restated Servicing Agreement Between The State of California Department of Water Resources and San Diego Gas & Electric Company" (Amendment No. 2). DWR states that Amendment No. 2 is intended to effect changes to the Agreement requested in D.02-11-074, the Bond Charge Decision. That decision, among other things, ordered SDG&E to make changes to its billing systems to impose the bond charges. As of December 9, 2002, SDG&E and DWR were in the process of executing Amendment No. 2. DWR states that it agrees to the provisions of Amendment No. 2, and requests that the Commission approve Amendment No. 2, or that the provisions of Amendment No. 2 be incorporated in the Commission's final 2003 Servicing Order decision.

DWR's December 9, 2002 memorandum also states that it reserves comment on the draft decisions which would adopt the Servicing Orders. DWR considers it premature to comment on these draft decisions because DWR submitted a request to the Commission on December 9, 2002, requesting that the Commission order the utilities to enter into an operating agreement with DWR pursuant to Water Code § 80106(b). DWR states that any Servicing Order adopted by the Commission must be consistent with the operating agreement request.

SDG&E's December 9, 2002 comments note that it has agreed with DWR on the terms of Amendment No. 2, and that it anticipates submitting a signed copy of Amendment No. 2 to the Commission with SDG&E's December 16, 2002 reply comments.<sup>5</sup> SDG&E states that the purpose of Amendment No. 2 is to revise the procedures found in the existing Servicing Agreement, and that the "revisions contemplate the manner by which SDG&E collects the DWR bond charges from its customers and remits them to DWR and the collection of fees by SDG&E for undertaking these agency services." (SDG&E Comments, p. 4.)

Amendment No. 2 makes four changes to SDG&E's existing Amended Servicing Agreement. The first change is to add Section 7.5 to the Amended Servicing Agreement. Section 7.5 provides for a reconciliation payment in the event there is a change in the applicable law, or a payment procedure is inconsistent with applicable law. The second change makes a revision to Section 7.4 of the Amended Servicing Agreement to reference the addition of Section 7.5. The third change is a revised Attachment C to the Amended

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<sup>5</sup> No reply comments on the draft decision were received.

Servicing Agreement. The new Attachment C revises the format of the daily and monthly reports to include additional information about the implementation of the bond charges. The fourth change is a revised Attachment G to the Amended Servicing Agreement. As revised, Attachment G provides an estimate of SDG&E's implementation costs associated with the DWR bond charge, and the reimbursement procedure that SDG&E and DWR will follow.

We will incorporate the provisions of Amendment No. 2, as agreed to by DWR and SDG&E, into the Servicing Order that we adopt today. The revisions in Amendment No. 2 enable SDG&E to carry out the Commission's directives contained in the Bond Charge Decision.

We now turn to SDG&E's concerns with the proposed modifications to the Amended Servicing Agreement.

SDG&E's first concern is that the use of "deemed" in sections 1.51 and 2.2.(c) of Amended Servicing Agreement are unnecessary because it may conflict with the pro rata sharing of revenues ordered in D.02-09-053 and because Attachments H and J specify how to determine the amount of energy provided by DWR and SDG&E.

We agree with SDG&E. Attachments H and J explain how to determine the amount of energy provided by DWR and SDG&E. The use of the term or phrase starting with "deemed" could be interpreted to mean that another calculation of DWR energy is possible. We will delete the references in sections 1.51. and 2.2.(c).

SDG&E's second concern is whether the utility is acting as DWR's agent for surplus sales, as found in the proposed modification to sections 2.3., 3.5. and 14.1. SDG&E urges the Commission to modify the draft decision to state that SDG&E's agency role cannot be allowed to interfere with providing service to

SDG&E's customers. SDG&E states that its primary fiduciary obligation is to undertake its operational responsibilities, whether of its assets or of the allocated DWR contracts, in the best interests of the utility's ratepayers and shareholders."

We decline to delete those references. The draft decision regarding the Operating Order notes that the utilities are operating as DWR's agent for limited purposes, and that it reflects the nature of the capacity in which the utilities are undertaking these functions.

SDG&E's third concern is with the costs associated with credit risk management and the incremental costs associated with the sales of surplus energy. SDG&E states that the provisions of Section 3 of the Operating Order would place the credit risk management and costs on SDG&E. SDG&E states that credit risk management should be in the Operating Agreement, and not in the Servicing Order. If costs are incurred from the credit management, SDG&E states that DWR must share in these costs and that they should be included in the Servicing Order as part of the surplus energy sales revenue remittance calculation. SDG&E asserts that costs that are incremental to the sale should be attributed to the sales and any revenues should be net of any sales costs. SDG&E contends that under AB X1, SDG&E cannot be given any financial responsibility for DWR's costs. In addition, SDG&E contends that AB 57 requires that its creditworthiness cannot be impaired. SDG&E raised similar arguments with respect to the Operating Order.

We will accept DWR's proposed modification to sections 3.1(c) and 3.1(d) of the Servicing Order. This is consistent with the Commission's goal of reducing the utilities' reliance on the use of state resources to fulfill their obligations to serve customers. As noted in the Operating Order decision, the collateral requirements are not imposed by the DWR Contracts, but rather by

exogenous variables such as the ISO tariff. With respect to the incremental costs associated with surplus energy sales, the Operating Order decision addresses the recovery of those costs.

SDG&E's fourth concern is with sections 3.5 and 12, and whether DWR must provide indemnification or a waiver of liability in situations involving the sale of surplus energy and disputes with third-party purchasers. Section 12 of the Amended Servicing Agreement addresses indemnification issues, but does not specifically address how specific situations would be handled. SDG&E contends that the draft decision should be modified to state that DWR must provide indemnification or waiver of liability if SDG&E is going to act on DWR's behalf. Neither DWR or SDG&E have proposed language to clarify the indemnification issue. We refrain from crafting additional indemnification language for the Servicing Order. This issue is best left to DWR and SDG&E to work out.

The fifth concern of SDG&E is the timing of when SDG&E shall make its remittances to DWR for the sale of surplus energy. Under section 4.2(g) and Attachment J, SDG&E is to remit DWR's share of the surplus sales revenues on the first business day after the 20th day of the month following each delivery month. SDG&E takes the position that it should not have to advance any funds to DWR, and that it should only remit DWR's share of the surplus sales revenues when the purchasers of the power pay SDG&E.

In SDG&E's comments to the draft decision, SDG&E points out that the provision in Section 4.2(g) of the proposed Servicing Order requiring SDG&E to remit surplus sales revenue to DWR on the 20th of the month following delivery could result in SDG&E having to incur the cost of a 40- to 55- day float. SDG&E states that this would require a revenue increase for additional cash working

capital in SDG&E's next cost of service filing, which is contrary to, and not permitted under AB X1. SDG&E also points out that in DWR's December 5, 2002 memorandum to the Commission, that DWR indicated that surplus sales revenue should be remitted on "an actual receipts basis" and not on a "cost incurred" basis. SDG&E states that the draft decision regarding the Operating Order refers to the "receipts" concept, while the Servicing Order uses an obsolete reference to 20 days.

In D.02-09-053, at page 46, we stated that although DWR remains financially responsible for paying all contract-related bills, we expect that the utilities will "verify the invoices and instruct DWR to pay the bills." This statement suggests that SDG&E should not have to advance funds to DWR before DWR has to pay its invoices. The provisions in section 4.2(g) and Attachment J would require SDG&E to remit payments within 20 days of each delivery month, which presumably does not match up with when the invoices are due. Exhibit C of the Operating Order, which is entitled "Settlement Principles For Remittances And Surplus Revenues," provides at page C-3 that the: "Revenues from a forward market sale shall not be distributed to the Parties until after Utility receives the revenues from the sales and any sale-related charges." In reference to "ISO Real Time Market Sales," Exhibit C states that the: "Revenues from delivery of surplus energy to the ISO real time market shall not be distributed to the Parties until after Utility receives payment for final monthly invoice from the ISO for the month in which the surplus energy was delivered." Both of the quoted passages mean that SDG&E should not have to remit revenues from the energy sales to DWR until SDG&E has received payment. Accordingly, we shall change the reference in Section 4.2(g) of the Servicing



Order regarding the 20 days to make it consistent with Exhibit C of the Operating Order.

Attachment J of the proposed Servicing Order is premised on remitting a preliminary amount of the surplus energy sales revenues to DWR on the first business day after the 20th day of the month. However, as discussed above, Exhibit C of the Operating Order specifies that revenues from forward sales, and sales to the ISO, are to be remitted to DWR after the utility has received payment. In order to make the Servicing Order consistent with the Operating Order, proposed Attachment J should be deleted from the Servicing Order that we adopt in this decision. In addition, other references to Attachment J that appear in the following sections of the Servicing Order shall also be deleted: 1.30.5.; 2.2.(d); 2.2.(f); 2.5.; 4.1.; 4.2.(g); 4.2.(h); 5.1.; 5.5.; and 14.17.

SDG&E's sixth concern is with the proposed modifications to sections H and I of Attachment B. SDG&E notes in its comments that section H.2. "should be deleted since this deals with the reconciliation SDG&E just completed."

We note that in DWR's October 8, 2002 transmittal of the proposed modifications to Attachment B, that section H.2. had already been deleted. As for the proposed modifications to section I of Attachment B, the addition of this section is consistent with the Post-Transition Remittance Methodology that is to take effect on and after the effective date of the Operating Order as provided for in Attachment H.

The seventh concern of SDG&E is that SDG&E has not included the Commission approved version of Attachment F in its proposed modifications. We have compared DWR's submission of Attachment F to the version that was

approved in D.02-07-038. DWR's submission is virtually identical<sup>6</sup> to what was approved in D.02-07-038, except that DWR's October 8, 2002 submission does not contain the table entitled "Summary Results of 20/20 Conservation Program: August 2002."<sup>7</sup> We have indicated on Appendix A and Appendix B that the table approved in D.02-07-038 should be used in Attachment F.

SDG&E's eighth concern is with Attachment G, the DWR billing agent cost estimates. SDG&E states that this chart is outdated because it does not include bond charges and exit fees. SDG&E states that this section will need to be updated once these charges and fees are known. With that understanding, we recognize that Attachment G will need to be changed to reflect these additional charges and fees.

SDG&E's ninth concern is with the information that DWR wants in Service Attachment 2. SDG&E states that it is working with DWR to determine what kind of information DWR wants. DWR's October 8, 2002 submission only included the one page "Service Attachment 2," which described the "Title" of seven sections. DWR's Service Attachment 2 also notes that this is "To be provided by Utility." We will retain the Service Attachment 2 page as part of the Servicing Order, with the understanding that DWR and SDG&E will need to discuss what kind of information DWR wants from SDG&E.

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<sup>6</sup> DWR's submission, which appears in Appendix A, has been changed in several places to reflect that we are approving a Servicing Order. DWR's submission of Attachment F also included a portion of Attachment G, which DWR deleted using strikeout marks.

<sup>7</sup> If one looks at the marked revisions in Appendix A of this decision, it appears that the "Summary Results of 20/20 Conservation Program: August 2002" table may be hidden or embedded behind the deleted "Summary Results of 20/20 Conservation Program: July 2001" table.

The majority of the proposed modifications to the Amended Servicing Agreement reflect the actions taken in the Contract Allocation Decision, and are also linked to the proposed operating agreement. All of the proposed modifications, as shown in the attached Servicing Order and as discussed above, are consistent with the directives ordered in D.01-09-013, D.02-02-051, D.02-02-052, and D.02-09-053.

Since DWR and SDG&E have been unable to timely agree on a mutually acceptable modified Amended Servicing Agreement, we have further modified DWR's proposed modifications to the Amended Servicing Agreement to turn the document into a Servicing Order. The marked and clean versions of the Servicing Order, which are attached to this decision as Appendix A and Appendix B, are approved. SDG&E shall be directed to comply with the terms and conditions of the attached Servicing Order.

We note that today's approval of the Servicing Order does not prevent DWR and SDG&E from negotiating a mutually agreeable modified servicing agreement in the future and bringing such an agreement to us for approval. However, due to the approaching deadline for when SDG&E is to take over the operational aspects of the DWR contracts allocated to SDG&E, the attached Servicing Order is needed so that the operational transition for the DWR contracts can proceed smoothly.

Southern California Edison Company (SCE) raised a point in its comments to the draft decision regarding SCE's Servicing Order that has applicability to SDG&E as well. SCE states in its comments that it has had discussions with DWR as to the possible terms and conditions that could be included in the Amended Servicing Agreement. Although it is unclear at this point whether such discussions will lead to an agreement, SCE seeks clarification from the

Commission that SCE be allowed to seek the termination of any Servicing Order that may be adopted, with an executed agreement between SCE and DWR “which substantially and fundamentally comport with the terms and conditions set forth in the ... Servicing Order and the related attachments as they then exist.” (SCE December 9, 2002 Comments, p. 11.)

We are receptive to reviewing a mutually agreeable servicing arrangement between SDG&E and DWR, so long as the terms do not substantially deviate from what’s adopted in today’s servicing order. Should SDG&E and DWR negotiate such an arrangement, SDG&E is free to request that the Commission consider replacing the Servicing Order adopted in today’s decision with the mutually agreeable arrangement.

### **Rehearing and Judicial Review**

This decision construes, applies, implements, and interprets the provisions of AB X1. Pursuant to Public Utilities Code § 1731(c) any application for rehearing of this decision must be filed within 10 days of the date of issuance of this decision, and the provisions of Public Utilities Code § 1768 are applicable to any judicial review of this decision.

### **Comments on Draft Decision**

Pursuant to Public Utilities Code §311(g)(1) and Rule 77.7 of the Commission's Rules of Practice and Procedure, the draft decision of the ALJ was mailed to the parties on November 20, 2002. The comments on the draft decision have been reviewed, and appropriate changes have been made to the Servicing Order and the attachments.

### **Assignment of Proceeding**

Loretta M. Lynch is the Assigned Commissioner and John S. Wong is the assigned ALJ in this proceeding.

### **Findings of Fact**

1. In response to D.02-09-053, on October 8, 2002, DWR submitted a memorandum and its proposed modifications to the Amended Servicing Agreement.
2. Prior to today's decision, the existing servicing arrangement between DWR and SDG&E are composed of the Amended Servicing Agreement and Amendment No. 1.
3. D.02-09-053 allocated the DWR contracts, and ordered SDG&E and the other two large electric utilities, to assume all of the operational, dispatch, and administrative functions for the allocated electricity contracts, effective January 1, 2003.
4. The proposed modifications to the Amended Servicing Agreement and related attachments have been compared to the Amended Servicing Agreement that was approved in D.02-04-048, to Amendment No. 1 approved in D.02-07-038, and have been reviewed in light of the Contract Allocation Decision.
5. One of the goals of R.01-10-024 is to allow the utilities to resume purchasing electric energy, capacity, ancillary services and related hedging

instruments to fulfill their obligation to serve and meet the needs of their customers.

6. In order for SDG&E and the other utilities to undertake the operational responsibilities associated with the allocated DWR contracts beginning on January 1, 2003, certain operational arrangements and servicing arrangements need to be in place before that date.

7. Certain provisions of the proposed operating agreement may affect certain provisions of the proposed modifications to the Amended Servicing Agreement and related attachments.

8. The proposed operational agreement is being considered by the Commission in R.01-10-024.

9. The concerns of SDG&E over the proposed modifications to the Amended Servicing Agreement and related attachments have been reviewed and considered, and appropriate changes have been made as discussed in this decision.

10. Notwithstanding today's approval of the Servicing Order, DWR and SDG&E are free to submit a mutually agreeable modified servicing agreement for our approval.

### **Conclusions of Law**

1. All of the proposed modifications to the Amended Servicing Agreement and the related attachments are consistent with the directives ordered in prior Commission decisions.

2. Since DWR and SDG&E have been unable to timely agree on a mutually acceptable modified Amended Servicing Agreement, the Commission has made additional modifications to convert the modified Amended Servicing Agreement into a Servicing Order.

3. The Servicing Order attached to this decision should be approved.
4. SDG&E should be directed to comply with the terms and conditions contained in the approved Servicing Order.

**O R D E R**

**IT IS ORDERED** that:

1. The marked version, attached hereto as Appendix A, and the clean version, attached hereto as Appendix B, of the “2003 Servicing Order Concerning State of California Department of Water Resources And San Diego Gas & Electric Company” (Servicing Order) is approved.
2. San Diego Gas & Electric Company shall comply with all of the terms and conditions of the approved Servicing Order.
3. This proceeding is closed.

This order is effective today.

Dated December 19, 2002, at San Francisco, California.

LORETTA M. LYNCH  
President  
HENRY M. DUQUE  
CARL W. WOOD  
GEOFFREY F. BROWN  
MICHAEL R. PEEVEY  
Commissioners

**APPENDIX A**  
**2003 Servicing Order**



# **APPENDIX B**

## **2003 Servicing Order**

A.01-06-039 ALJ/JSW/sid